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No. 06-1622 MAR 1 6 2007

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IN THE

Supreme Court of the United States

SUSANA KHANCHALIAN, NATALI KHANCHALIAN,
PETITIONERS

v.

U.S. DEPARTMENT OF JUSTICE, ALBERTO R. GONZALES,
ATTORNEY GENERAL

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Second Circuit's decision violates the rule laid in SEC v. Chenery, 332 U.S. 194, 67 S.Ct. 1575, 91 L.Ed 1995 (1947), in that both its decision, and those of the Board of Immigration Appeals [BIA] are so vague and unclear that the exact grounds for their decisions are indiscernible.

2. Whether the Second Circuit's decision misapplied the substantial evidence standard to such an extent that its decision must be vacated and reversed.

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OPINIONS BELOW

This petition seeks review of a decision of the United States Court of Appeals for the Second Circuit, Khanchalian v. U.S. Dep't of Justice, 2006 U.S. App. LEXIS 31037 (2d Cir., Dec. 13, 2006). The unofficial report of the Board decision subject to review before the Court of Appeals, was In re Khanchalian, A70-904-029 and A79-133-769 (BIA, Mar. 30, 2006). The March 30, 2006 order of the Board denied reconsideration of two separate Board decisions denying the Khanchalians' appeal from the decision of an Immigration Judge [IJ]. The two Board decisions were both In re Khanchalian, (BIA Nov. 30, 2005). The initial IJ decision denying the Khanchalians asylum and related immigration benefits was Matter of Khanchalian, (IJ, Aug. 9, 2004). There was a separate order from the IJ ordering Natali Khanchalian removed from the United States dated August 9, 2004. Copies of these administrative decisions appear in the attached appendix.

JURISDICTION

This petition seeks review of a decision of the United States Court of Appeals for the Second Circuit dated December 13, 2006, on an immigration matter concerning the application of the asylum law. Jurisdiction exists before this Court pursuant to 28 U.S.C. § 1254. There was no order respecting rehearing before the Court of Appeals nor any request for an extension of time to file the petition for a writ of certiorari.

RELEVANT PROVISIONS INVOLVED

Immigration and Nationality Act [INA] § 101(a)(42), 8 U.S.C. § 1101(a)(42), states:

> The term "refugee" means (A) any person who is outside any country of such person's nationality . . . and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion . . ..

STATEMENT

The United States Court of Appeals for the Second Circuit had jurisdiction to review the order of the Board of Immigration Appeals dated March 30, 2006, pursuant to Immigration and Nationality Act [INA] § 242(a), 8 U.S.C. § 1252(a).

Petitioner, Susana Khanchalian, and her daughter, Natali Khanchalian, are Armenians. Susana [hereinafter, Ms. Khanchalian] is a native of the former Soviet Union and a citizen of Georgia. She was married to another Armenian who secretly supported the Abkhazian separatist movement in Georgia. He secretly stole medical supplies from his place of employment to help the movement. As a result, he was frequently harassed by Georgian authorities, and at least one time came home after being beaten and abused by such authorities. As a result, Ms. Khanchalian and her family briefly moved to Tbilisi in search of safety and then she traveled to Moscow and

obtained a visa to come to the United States. Shortly thereafter, her husband disappeared in Georgia, only to be found several months later in a river after having been tortured and murdered by Georgian authorities because of his support for the Abkhazians. During that time period, terrible and brutal fighting broke out between the Georgians and the Abkhazians, which one respected authority in the record described as "house-to-house murder". Joint Appendix [JA] at 405.

REASONS FOR GRANTING THE PETITION

On December 13, 2006, the United States Court of Appeals for the Second Circuit issued a decision in the Petitioners' case which has "so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's supervisory power." Rules of the Supreme Court of the United States, Rule 10(a) [hereinafter, Rules]. Additionally, the Court of Appeals "decided an important federal question in a way that conflicts with relevant decision of this Court." Rule 10(b).

The Court of Appeals stated:

> In her motion to reconsider, Khanchalian contended that the BIA failed to consider the impact on her case of this Court's decisions in Jin Chen v. U.S. Dep't of Justice, 426 F.3d 104 (2d Cir. 2005) and Cao He Lin v. U.S. Dept' of Justice, 428 F.3d 391 (2d Cir. 2005). Khanchalian's motion to reconsider focused exclusively on the impact of Jin Chen and Cao He Lin on two of the IJ's five adverse credibility factors.

Khanchalian v.U.S. Dep't of Justice, 2006 U.S. App. LEXIS 31037 (2d Cir., Dec. 13, 2006), at 2a-3a. Later, the Court continued:

> The IJ identified and the BIA adopted and affirmed three other material inconsistencies fatally undermining Khanchalian's credibility, which Khanchalian never challenged. Because Khanchalian does not dispute those factors, she has waived any challenge to them. [citation omitted]. A review of the record reveals substantial evidence supporting the IJ's findings of material inconsistencies, and thus remand would be futile even if the IJ had engaged in some impermissible speculation.

Khanchalian v.U.S. Dep't of Justice, at 3a-4a. Thus, according to the Court of Appeals, Ms. Khanchalian's motion to reconsider "focused exclusively on . . . two of the IJ's five adverse credibility factors" and there were "three other material inconsistencies . . . which Khanchalian never challenged." A careful reading of the various agency decisions fails to support the Court of Appeals' conclusions, and thus not only was that Court's decision unsupported by substantial evidence, it was the product of a serious misapplication of the substantial evidence standard as announced by this Court in that the alleged reasons in the record supporting the agency's decision are simply not there.

The Second Circuit erred by stating that Ms. Khanchalian's motion to reconsider "focused exclusively . . . on two of the IJ's five adverse credibility factors." Khanchalian at 2a-3a. A review of the motion in the record, 7a-12a [copy in appendix], demonstrates that it raised more than two of the adverse credibility factors,

and in fact, raised all of the material credibility factors. See, 9a-12a. The Second Circuit stated that "the IJ identified and the BIA adopted and affirmed three other material inconsistencies". Khanchalian at 3a. Again, this assertion is difficult to reconcile with the record, because, regardless to which BIA decision the Court was referring, 5a-6a(decision of March 30, 2006); or 13a-14a(decisions of Nov. 30, 2005), all such decisions used only the most general language to uphold the IJ's adverse credibility determination, and the IJ's adverse credibility determination, as reported in her oral decision, listed many purported reasons to support her conclusion, but none of these reasons were material or substantial. 23a-37a(IJ's decision at 4-19). There was no reason for Ms. Khanchalian's motion to reconsider to address itself to the IJ's numerous unsupportable reasons which were stated with the intention to otherwise support her unfounded adverse credibility determination.

In its decision of November 30, 2005, the Board adopted the IJ's adverse credibility determination, stating, "The Immigration Judge's decision outlined material discrepancies and omissions within and between [Ms. Khanchalian's] testimony and asylum application and the documentary evidence she submitted to support her claims." 13a. However, the Second Circuit's assertions to the contrary, that BIA decision did not adopt and affirm "three other material inconsistencies". Likewise, the decision of March 30, 2006, 5a, failed to adopt and affirm "three other material inconsistencies". Instead, that decision merely stated in a general way, "We find that Immigration Judge decision contained specific cogent reasons supporting her adverse credibility, namely material discrepancies and omissions within and between [Ms.

Khanchalian's] testimony and asylum application and other evidence (I.J. at 10-18)." 6a.

The discussion by the BIA leads back, in both BIA decisions, to the contents of the IJ's decision. According to the Second Circuit, the IJ's decision contains "three other material inconsistencies fatally undermining [Ms.] Khanchalian's credibility". Whether one confines oneself to the purported reasoning given in pages 29a-36a of the IJ's decision, or whether one reviews the IJ's decision in its entirety, "three other material inconsistencies" are simply not specified in the IJ's decision, thereby rendering the Second Circuit's decision suspect as to whether it appropriately applied the substantial evidence standard at all.

The IJ noted that the record was "confused" as to whether he was in Moscow or Tbilisi at the time of Ms. Khanchalian's departure from Moscow to the United States. JA 24a-25a. This is not a material nor substantial basis on which to base an adverse credibility determination, and certainly could have been clarified by the IJ simply asking Ms. Khanchalian during the hearing. Ms. Khanchalian's failure in 1993 to get a written statement from a friend of her husband who was in the United States was also not a satisfactory basis on which to draw an adverse credibility determination, especially since Ms. Khanchalian submitted other supporting documentation, such as a statement from her father in Georgia. It was also unreasonable for the IJ to expect Ms. Khanchalian to seek protection from the government authorities in Georgia, since her husband was involved with a group seeking to overthrow that regime. JA 25a. It was unreasonable for the IJ to expect some form of written corroboration from Ms.

Khanchalian's brother-in-law, who also was involved with the Abkhazian Independence Movement [AIM], because, as Ms. Khanchalian explained, she had "no idea where he might be". 26a. Additionally, Ms. Khanchalian submitted other corroborating documents.

It was unreasonable for the IJ to characterize Ms. Khanchalian's deceased husband's theft of medical supplies in support of the AIM as a "crime" because such a characterization only demonstrated the IJ's hostility to Ms. Khanchalian. The fact that Ms. Khanchalian's brief stay in Moscow was not noted on her biographic statement, 28a, was not a substantial basis on which to disbelieve her, especially in light of the fact that Ms. Khanchalian explained that the forms contained errors. 28a. The fact that Ms. Khanchalian did not bring her young daughter with her immediately to the United States was not a material nor substantial basis on which to disbelieve her. 28a.

Although the IJ characterized Ms. Khanchalian's testimony on how her husband moved from Moscow to Tbilisi as vague, 29a, this again was not a substantial basis to support an adverse credibility determination. The IJ could easily have asked a few questions along these lines if she had any doubts during the hearing. The IJ's insistence throughout the hearing that Ms. Khanchalian had testified that her husband's body had been found in a river along "with other corpses", 29a, is not supported by the transcript. On direct examination, Ms. Khanchalian's testimony left open the possibility that when her father identified her husband's body "among several corpses" that this occurred at the morgue, and not at the river. 38a [copy in appendix]. Later, the IJ utilized the phrase, "chained to a ferry with other corpses." 39a [copy in appendix]. But this is not what Ms. Khanchalian stated. Ms.

Khanchalian explained on cross-examination that her husband's body was in a morgue with other corpses, 41a [copy in appendix], but the IJ argued with her and unfairly put words in Ms. Khanchalian's mouth. 41a. The IJ erroneously stated, "You said and I quote, 'He was chained to a ferry with other corpses.' Those are your words." 41a [copy in appendix]. Thus, this was not a valid basis on which to support an adverse credibility determination. Additionally, Ms. Khanchalian's father's letter clearly indicated that the place where he was shown his son-in-law's body was in the morgue. 44a [copy in appendix].

It was pure speculation on the part of the IJ that Ms. Khanchalian's death certificate had to indicate that his body was found along with other corpses. 29a. As noted in a statement submitted during Ms. Khanchalian's appeal to the BIA, 19a-20a [copy in appendix], the words for ferry and damn were are very similar in Russian, and thus it was not a valid basis for the IJ to discredit Ms. Khanchalian's testimony over her confusion with the Russian language. 29a-30a.

The IJ's assertion that there were contradictions between Ms. Khanchalian's testimony and her father's brief letter, 30a; 44a (letter)[copy in appendix], was entirely unfounded. The two did not contradict eachother. It was unreasonable to expect that in such a brief letter, Ms. Khanchalian's father would go into all the details she was asked about in court. The letter from Ms. Khanchalian's father indicated he and she had been in telephone contact, thereby explaining why Ms. Khanchalian would know details that are not mentioned in her father's letter. The IJ also engaged in pure speculation when she presumed that a death certificate for Ms. Khanchalian's husband could not be issued with the precise date of death of December 10, 1992, 30a,

even though his "body had been in the water for some period of time." 30a. It may well have been that Ms. Khanchalian's husband was murdered on that date, only to have his body thrown into the river where he remained some time. It was also unreasonable for the IJ to fault Ms. Khanchalian because her written statement for asylum mentioning her belief that her husband had been killed in a custodial setting, 30a, was a fabrication because her father's brief letter did not mention this detail. 30a. It was also speculation on the part of the IJ that Ms. Khanchalian's father would not be called in by the police to retrieve his son-in-law's body, 30a, in that the actual murderers may have belonged to another unit of the government, or the police may simply murder fearlessly and with impunity.

The IJ erred in her application of the substantial evidence rule as well in faulting Ms. Khanchalian for mentioning for the first time on cross-examination that her husband had been called in by the police at other times other than the event she testified to on direct examination. 31a. Ms. Khanchalian explained she did not go into this on direct because she was not asked, and she was focused on responding to the questions asked her. 42a [copy in appendix]. Ms. Khanchalian's written application for asylum also refers to more than one occasion in which her husband was interrogated. 47a [copy in appendix].

In light of the known circumstances in Georgia, it was a distortion for the IJ to reduce Ms. Khanchalian's claim to one where her husband was "committing criminal acts". 32a. Ms. Khanchalian made clear her husband was supporting AIM, which obviously has the intention of overthrowing the government of Georgia.

The IJ also saw a contradiction where there is none with regard to finding a key in the pocket of Ms. Khanchalian's husband when his body was recovered. 32a-33a; 48a-50a (Ms. Khanchalian's written statement)[copy in appendix]. The IJ stated that Ms. Khanchalian's statement indicates his body "had been identified only by a key in his pocket because the body was decomposed". 32a-33a. Ms. Khanchalian's written statement states, "Although he was partially decomposed they knew it was my husband because of the apartment key found in his pocket." 49a. Ms. Khanchalian's statement does not indicate that the only way to identify his body was through the apartment key. It states his body was only partially decomposed. This does not support an inference by the IJ that it therefore could not be recognized without some external item such as an apartment key. The IJ failed to provide any valid reasons, as well, to reject Ms. Khanchalian's explanations that her father's letter was lacking in some details because he just wrote a short letter. 33a (bottom).

The Second Circuit stated in Khanchalian, at 3a, that Ms. Khanchalian's motion focused exclusively "on two of the IJ's five adverse credibility factors." Ms. Khanchalian's motion to reconsider raised at least 4 challenges to the adverse credibility determination, if not challenging all of the IJ's purported reasons in support of her adverse credibility determination. First, the motion raised the issue of the date on the death certificate. 9a-10a [copy in appendix]. The motion also raised the issue of why the police would have contacted Ms. Khanchalian's father after they retrieved the body of her husband. 10a. Her motion also raised the issue or conclusion by the IJ that Ms. Khanchalian's husband was a mere thief. 10a. Her motion also broadly

challenged most, if not all, of the grounds of the IJ's adverse credibility determination by explaining that Ms. Khanchalian was not in Georgia when her "husband's body was discovered, when his death certificate was executed" and that she "found out about his political activity" after the fact. 12a(bottom). The fact that the motion raised the issue that Ms. Khanchalian was not in Georgia when her husband was murdered and when his body was recovered, addresses the issue of why she may not have known about whether her husband's body was found along "with other corpses", 29a, as the IJ claimed to have heard. This also addresses the issue of whether Ms. Khanchalian's husband's body was found near a dam or a ferry. 29a-30a.

It must be borne in mind that the previous order from the BIA, dated November 30, 2005, 13a, dismissing the initial appeal, did not fairly place Ms. Khanchalian and her lawyer on notice as to which grounds cited by the IJ constituted material or substantial grounds for upholding her adverse credibility determination. The November 30, 2005 decision stated:

> We adopt and affirm the decision of the Immigration Judge . . . See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994)(noting that adoption or affirmance of a decision by an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those the Immigration Judge articulated in his or her decision"). . . . we agree with the Immigration Judge's adverse . . . credibility . . . findings. The Immigration Judge's decision

> outlined material discrepancies and omissions within and between the respondent's [Ms. Khanchalian's] testimony and asylum application and the documentary evidence . . ..

13a. Thus, the Board stated that the IJ's "decision outlined material discrepancies and omissions". The Board failed to address which of the reasons given by the IJ identified "material discrepancies and omissions". In referring to Matter of Burbano, the Board was making clear that it did not necessarily agree with all the reasons given by the IJ-- -- just that it agreed with her conclusion. There certainly appear to be some grounds offered by the IJ that no reasonable individual would rely on to support an adverse credibility determination, or which were immaterial. However, the Board left Ms. Khanchalian and her lawyer in the dark as to which grounds cited by the IJ constituted "material discrepancies and omissions". Thus, it is unfair to expect Ms. Khanchalian's motion to reconsider to discuss every discrepancy and omission, when the Board never identified with any particularity which grounds cited by the IJ were "material discrepancies and omissions".

Ms. Khanchalian's motion to reconsider addressed at least seven separate material grounds relating to credibility, and the latter two subsume all of the genuinely material issues raised by the IJ. 9a-12a. To reiterate, her motion took issue with the IJ's speculation over the date on the death certificate. 9a-10a. Her motion challenged the IJ's skepticism that the police would have contacted her father once they discovered the body of her husband. 10a. Her motion challenged the IJ's suggestion that Ms. Khanchalian's husband was only a thief. 10a. Ms. Khanchalian's

motion took issue over the IJ's determination that "there is no evidence to suggest that was death by misadventure". 11a. Ms. Khanchalian's motion took issue with any adverse credibility grounds concerning events for which she was not personally present in Georgia, including "when her husband's body was discovered, when his death certificate was executed". 12a. Ms. Khanchalian's motion also explained that she did not learn about her husband's political activities until after the fact. 12a.

The Second Circuit, however, indicated that Ms. Khanchalian's motion only addresses "two of the IJ's five adverse credibility factors", Khanchalian at 3a, thereby suggesting that some of the grounds raised in the motion did not address material adverse credibility factors, or possibly could be subsumed within a different adverse credibility factor. As the factors, as listed above, appear to be quite different, it is more likely the Second Circuit believed that some of the grounds raised in the motion failed to address material adverse credibility factors. However, the Court of Appeals failed to indicate which grounds were material, and which were not. Since Ms. Khanchalian's motion only raised issues that were listed in the IJ's decision, and the Second Circuit found some of those grounds not to be material, it follows that in its decision of November 30, 2005, when referring to "material discrepancies and omissions", 13a, identified by the IJ, the Board was not concluding that all of the purported reasons given by the IJ in support of her adverse credibility determination actually identified material discrepancies or omissions. This is understandable, because as discussed above, many of the purported grounds in support of the IJ's adverse credibility determination are not material, or rely upon a faulty

recollection of the contents of the record, or are otherwise suspect. The question though, for the Second Circuit, was how Ms. Khanchalian and her lawyer could reasonably be on notice as to which grounds cited by the IJ identified a material basis for doubting her credibility, and which did not, and how, in fairness, she could be faulted by the Second Circuit for purportedly failing to identify the material grounds for the IJ's adverse credibility determination, when the Board, in its decision of November 30, 2005, failed to do so.

In Khanchalian, at 3a, the Second Circuit indicated the IJ's decision contained "five adverse credibility factors". Since, as listed above, the IJ's decision gave considerably more than five purported reasons to support her adverse credibility determination, the Second Circuit must have decided that not all the reasons cited by the IJ were material grounds on which to support an adverse credibility determination, or were otherwise defective, or possibly, could all be included within a common category or factor in support of an adverse credibility determination. In light of the quality of many of the purported reasons listed by the IJ, it is more likely that the Second Circuit discounted a number of her reasons as not being material to her ultimate determination. This places an unfair burden on Ms. Khanchalian to divine which reasons the Second Circuit believed were material and which were not. As discussed above, all of the reasons cited by the IJ were defective in one way or another. The inability to determine from an agency decision, or a decision of the court of appeals, the grounds upon which that determination rests, makes identification of issues at the next appellate level difficult or impossible. In this case, Ms. Khanchalian is

thereby unfairly prejudiced in bringing a claim before this Court.

The Second Circuit's decision apparently accepted that "two of the IJ's five adverse credibility factors" were adequately overcome or explained by Ms. Khanchalian's motion, or simply based upon the inherent deficiencies within those two factors. Khanchalian, 3a-4a. The two most apparent factors in Ms. Khanchalian's motion relate to the date on the birth certificate, and why the police would have returned her husband's body. 9a-10a. However, other candidates for these two factors might relate to the subsequent argument within the motion that Ms. Khanchalian was not in Georgia when her husband's body was discovered, his death certificate was issued, and that she only learned after-the-fact about his involvement with AIM. 11a-12a. Assuming it is the former, the question remains of what the three remaining adverse credibility factors might be that were listed by the IJ---- in light of all the many factors that she listed. One of the potentially material purported discrepancies, according to the IJ, was Ms. Khanchalian's supposed waffling on whether her husband's body had been found alone or with other bodies. 29a. As explained above, Ms. Khanchalian's testimony, 38a [copy in appendix], did not directly state that her husband's body had been found with others, and the IJ put words in her mouth on this score. JA 273, l. 23 [copy in appendix]. When asked, Ms. Khanchalian explained her father retrieved her husband from the hospital morgue, where there were other bodies. 39a [copy in appendix]. Ms. Khanchalian's father's letter indicates he retrieved the body from a morgue. 44a [copy in appendix]. In light of the fact that the IJ basically misunderstood the contents of the record, the alleged discrepancy does not

actually appear in the record, and thus cannot be construed as material. To the extent that Ms. Khanchalian's motion may not have raised this issue, it was unfairly burdensome to expect her to do so, since the BIA decision of November 30, 2005, 13a, referred to material discrepancies as a basis for upholding the IJ's decision, and a discrepancy that is not in the record cannot be said to be material.

In any case, Ms. Khanchalian's motion asked the Board to not hold her responsible for any alleged discrepancies concerning factual events for which she was not present -- -- including "when her husband's body was discovered". 12a. The IJ made a statement concerning the cause of death, 29a-30a, but in such a round-about way that it is unclear if she intended her reference to be a basis for an adverse credibility determination. The IJ stated, "the information on the death certificate that was filed . . . is that the individual had dies [sic] from asphyxiation through drowning." 29a. During the initial appeal to the BIA, Ms. Khanchalian introduced into the record an argument that the person in Georgia who issued the death certificate was "semi-literate". 17a [copy in appendix]. Judging by the quality of the English translation, any reasonable adjudicator would be compelled to conclude similarly. Once having explained this issue on her appeal, 17a, and then having the Board uphold the IJ's decision only on those grounds which constituted "material discrepancies" -- -- albeit, without any further elucidation -- -- Ms. Khanchalian, in all fairness, should have been allowed to believe the issue had been settled in her favor, especially as the DHS attorney offered no opposition, and the Board did not specifically address this issue. Again, Ms. Khanchalian raised this issue in her motion when she asked to be

forgiven concerning events for which she was not personally present, in particular, "when his death certificate was executed". 12a.

Another possible contender for one of the Second Circuit's three adverse credibility factors, was whether Ms. Khanchalian's husband's body was found in a river near a ferry or a dam. 29a-30a. The dispute over the word is not altogether material, especially, in light of the fact that Ms. Khanchalian's motion to reconsider explained that "she herself was not present when her husband's body was discovered". 12a. But assuming for the sake of argument that this issue was not raised in Ms. Khanchalian's motion to reconsider, neither Ms. Khanchalian nor her attorney were on reasonable notice that this was an issue that needed to be reconsidered, as Ms. Khanchalian explained in her appeal that the two words are similar in Russian (phonetically, "plot" versus "plotina", 20a), and Ms. Khanchalian explained she speaks Russian, Georgian, and Armenian, 20a [copy in appendix], and had confused these words. The Board did not reject this argument, and the DHS failed to oppose it. Thus, it did not appear that it was an issue which needed further development in the motion to reconsider. The IJ's analysis that the choice of wording was particularly important because it somehow related to Ms. Khanchalian's fear that her husband had been tortured before he was murdered, 30a, was a non sequitor.

It is unlikely that the Second Circuit considered Ms. Khanchalian's testimony on cross examination that her husband was called in by police more than once, as noted by the IJ at 31a (top), to pose any particular problem, or to be within the Second Circuit's three "adverse credibility factors", because Ms. Khanchalian explained in her testimony that she did not mention

these other events in her direct testimony because she was responding only to the question put to her, and she also mentioned these events in her written application for asylum. It is also doubtful that the IJ's concern about the apartment key that was found in the pocket of Ms. Khanchalian's husband, 37a, was considered by the Second Circuit to be material, especially, in light of the fact, that the IJ misread the written statement, which did not state the body could only be identified by virtue of the key.

Thus, the Court of Appeals appears to have accepted Ms. Khanchalian's arguments about the first two of the five adverse credibility factors. The remaining three, if in fact they exist, suffer from serious defects and thus are neither substantial nor material inconsistencies.

The substantial evidence standard requires that the adjudicator consider the record as a whole, including evidence and explanations which run contrary to his or her conclusion. Universal Camera Corp. v. NLRB, 340 U.S. 474, 478, 71 S.Ct. 456, 95 L.Ed 456 (1951) (it is not enough to find "in the record evidence which, viewed in isolation, substantiated the Board's findings."). The Supreme Court has defined substantial evidence to be "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229, 59 S.Ct. 206, 83 L.Ed. 126 (1938). Substantial evidence "must do more than create a suspicion of the existence of the fact to be established." NLRB v. Columbian Enameling and Stamping Co., 306 U.S. 292, 300, 59 S.Ct. 501, 83 L.Ed. 660 (1939). This standard also applies to credibility determinations. The IJ's misapplication of this standard is reviewed de novo.

"Deference is not due where findings and conclusions are based on inferences or presumptions that are not reasonably grounded in the record." Balasubramanrim v. INS, 143 F.3d 157, 162 (3d Cir. 1998).

The Second Circuit's analysis in Ms. Khanchalian's case is contrary to the rules involving substantial evidence analysis, and thus, its decision should be vacated and reversed. At a deeper level, Ms. Khanchalian's right to be on notice as to which arguments needed to be raised in her motion was prejudiced by the Board's general pronouncements about credibility, without responding to the arguments she raised in her appeal to the Board. The agency decisions, as well as the Second Circuit's, are unclear, leaving the reader with no option but to chisel the meaning from the written decisions, in violation of the rule laid in SEC v. Chenery, 332 U.S. 194, 67 S.Ct. 1575, 91 L.Ed 1995 (1947).

CONCLUSION

Because of these fundamental errors, certiorari should be granted.

Respectfully submitted,

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No. 06-2064-ag NAC

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Susana Khanchalian, Natali Khanchalian,
Petitioners,
v.
U.S. Department of Justice, Alberto R. Gonzales,
Attorney General, Respondents.

December 13, 2006, Decided

NOTICE: RULES OF THE SECOND CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

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FOR RESPONDENT: Patrick J. Fitzgerald, United States Attorney, Craig Oswald, Rick D. Young, Assistant United States Attorneys, Chicago, Illinois.

JUDGES: PRESENT: HON. DENNIS JACOBS, Chief Judge, HON. THOMAS J. MESKILL, HON. RICHARD C. WESLEY, Circuit Judges.

OPINION: SUMMARY ORDER

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of Immigration Appeals ("BIA"), it is hereby ORDERED, ADJUDGED, AND DECREED, that the petition for review is DENIED.

Susana Khanchalian, a native and citizen of Georgia, seeks review of a March 30, 2006 order of the BIA denying her motion to reconsider its November 30, 2005 order adopting and affirming immigration judge ("IJ") Noel Ferris' August 9, 2004 decision denying Khanchalian's applications for asylum and withholding of deportation. *In re Susana Khanchalian, Natali Khanchalian*, Nos. A70 904 029, A79 133 769 (B.I.A. March 30, 2006). We assume the parties' familiarity with the underlying facts and procedural history of the case.

This Court reviews the BIA's denial of a motion to reconsider for abuse of discretion. *See Kaur v. BIA*, 413 F.3d 232, 233 (2d Cir. 2005) (per curiam); *Jin Ming Liu v. Gonzales*, 439 F.3d 109, 111 (2d Cir. 2006) (per curiam). An abuse of discretion may be found where the BIA's decision "provides no rational explanation, inexplicably departs from established policies, is devoid of any reasoning, or contains only summary or conclusory statements; that is to say, where the Board has acted in an arbitrary or capricious manner." *Kaur*, 413 F.3d at 233-34; *Ke Zhen Zhao v. United States DOJ*, 265 F.3d 83, 93 (2d Cir. 2001) (internal citations omitted).

A motion to reconsider must specify errors of law or fact in the BIA's decision and be supported with pertinent authority. 8 C.F.R. § 1003.2(b); *Ke Zhen Zhao*, 265 F.3d at 90. In her motion to reconsider, Khanchalian contended that the BIA failed to consider the impact on her case of this Court's decisions in *Jin Chen v. United States DOJ*, 426 F.3d 104 (2d Cir. 2005) [*3] and *Cao He Lin v. United States DOJ*, 428 F.3d 391 (2d Cir. 2005). Khanchalian's motion to reconsider

focused exclusively on the impact of *Jin Chen* and *Cao He Lin* on two of the IJ's five adverse credibility factors. However, in *Cao He Lin*, 428 F.3d at 395, this Court stated that remand is not required where "the adjudicator relied so little on the error-infected aspect of its reasoning, that there is no realistic possibility of a different result on remand, [or] the evidence so overwhelmingly supports the IJ's finding that, notwithstanding identified errors, there is no realistic possibility of a different result on remand." In *Xiao Ji Chen v. United States DOJ*, 434 F.3d 144, 161 (2d Cir. 2006) this Court also noted that remand was not required where "(1) substantial evidence supports the error-free findings that the IJ made, (2) those findings adequately support the IJ's ultimate conclusion that petitioner lacked credibility, and (3) despite errors -- considered in the context of the IJ's entire analysis -- we can state with confidence that the IJ would adhere to his decision were the petition remanded." This Court [*4] subsequently extended the doctrine of futility of remand to review of BIA and IJ denials of motions to reopen and reconsider. *See Alam v. Gonzales*, 438 F.3d 184, 187-88 (2d Cir. 2006).

The IJ identified and the BIA adopted and affirmed three other material inconsistencies fatally undermining Khanchalian's credibility, which Khanchalian never challenged. Because Khanchalian does not dispute those factors, she has waived any challenge to them. *See Yueqing Zhang v. Gonzales*, 426 F.3d 540, 541 n.1 (2d Cir. 2005). A review of the record reveals substantial evidence supporting the IJ's findings of material inconsistencies, and thus remand would be futile even if the IJ had engaged in some impermissible speculation. *See Alam*, 438 F.3d at 187-

88. The BIA thus did not abuse its discretion in denying Khanchalian's motion to reconsider.

For the foregoing reasons, the petition for review is DENIED. Having completed our review, any stay of removal that the Court previously granted in this petition is VACATED, and any pending motion for a stay of removal in this petition is DENIED as moot. Any pending request for oral argument in this petition is DENIED in accordance with Federal Rule of Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

Files: A70 904 029 - New York
A79133 769

In rc; SUSANA KHANCHALIAN NATALI KHANCHALIAN

IN REMOVAL PROCEEDINGS MOTION
ON BEHALF OF RESPONDENTS: a Floroff, Esquire
CHARGE:

Notice: Sec. 237(a)(1)(B), I &N Act [8 U.S.C. § 1227(a)(1)(B)]-
In the United States in violation of law (both respondents)
APPLICATION: Reconsideration

ORDER:

PER CURIAM. This case was last before us on November 30, 2005, when we adopted and affirmed the Immigration Judge's decision denying the respondents' applications for asylum, witholding of removal and protection under the Convention Against Torture.We agreed with the Immigration Judge's findings that the lead respondent was not credible, failed to meet her burden of proof and did not establish a well-founded fear of persecution on account of a protected ground. The lead respondent moves the Board to reconsider our decision dismissing her appeal in light of two recent decisions of the United States Court of Appeals for the Second Circuit. See Chen v. Gonzales, 426 F. 3d 104 (2d Cir. 2005) and Cao v. Gonzales, 428 F.3d 391(2d Cir. 2005).

These decisions do not persuade us that the Immigration Judge's adverse credibility, burden of proof, and nexus findings were wrong. We find that Immigration Judge decision contained specific cogent reasons supporting her adverse credibility, namely material discrepancies and omissions within and between the respondents' testimony and asylum applications and other evidence (I J. at 10- 18). Secaida-Rosales v. INS., 331 F.3d 297, 307 (2d Cifr. 2003).We find no reason to disturb our decision to adapt and affirm the Immigration Judge's decision denying the respondents' applications for relief and protection.

We find that the lead respondent did not present any additional arguments, changes in law, or aspects of the case that were overlooked that would warrant reconsideration of our previous decision. Thus, we are not persuaded that there is a basis for us to conclude that our initial determination was in any way defective, Accordingly, the motion to reconsider is denied.,Matter of Cerna, 20 I &N Dec. 399 (BIA 1991), aff'd, 979 F.2d 212 (11th Cir.1992); see also 8 C.F.R. § 1003.2.

UNITED STATES DEPARTMENT OF JUSTICE
BOARD OF IMMIGRATION APPEALS,
5107 Leesburg Pike, Suite 2000, Falls Church, VA 22041

RE: SUSANA KHANCHALIAN A 70 904 029
NATALI KHANCHALIAN A 79 133 769

MOTION TO RECONSIDER

In light of two most recent decision of the United States Court of Appeals for the Second Circuit Jin Chen v. US Department of Justice and Attorney-General Gonzales September 23, 2005, Docket No. 03-41100 and Cao He Lin a/k/a Je Ling Chao v. US Department of Justice and Attorney General Gonzales November 04,2005, Docket No. 02-4814

November 30, 2005 Board of Immigration Appeals issued the decision affirming the decision made by Immigration Court and dismissing the appeal. This Motion to Reconsider is filed in accordance with provisions of 8 CFR, para. 1003.2. It is filed by the party affected by the Decision of the Board (8 CFR, para. 1003.2(a). It is filed with the Board within 30 days after the mailing of the Board's Decision (8 CFR para. 1003(b)(2). It is the first Motion to Reconsider filed with the Board (8 CFR para. 1003(b)(2).

The Decision of the Board we are asking to reconsider was made PER CURIAM and contains references to several Decisions of the Board and Federal Courts, specifically, Court of Appeals for the Ninth Circuit.

There is no indication in the BIA Order, that the most recent decisions of the Court of Appeals for the Second Circuit were taken into consideration. The Decision of Immigration Court on appeal was issued in New York, therefore, in the Second Circuit and the recent decisions, i.e. Jin Chen v. U.S. Department of Justice and Attorney General Gonzalez – September 23, 2005, Docket No. 03-41100 and Cao He Lin a/k/a J Ling Chao v. U.S.Department of Justice and Attorrney General Gonzales, November 04, 2005, Docket No. 02-4814 (hereinafter referred to Second Circuit Decisions) are very important for the matter under consideration.

Just like the present case Second Circuit Decisions concentrate on credibility issues. In Cao He Lin v. US Department of Justice and Attorney General Gonzales the Second Circuit stated: "As in many such cases, the pivotal issue is petitioner's credibility, an issue that the IJ determines in the first instance" id.

As in both Second Circuit Decisions the Decision of Immigration Court under consideration regards the documents presented by the Respondent as ambiguous, i.e. Death Certificate of the leading Respondent's Husband (Decision of the Court, page 11, last para and the testimony of the leading Respondent inconsistent (Decision of the Court, page 18 upper para.).

In Cao He Lin a/k/a Je Ling Chao v. US Department of Justice and Attorney General Gonzalez the Second Circuit stated: ".. the IJ must act fairly in judging credibility and in assessing the sufficiency of evidence. For example, she may not engage in speculation or rely solely on minor inconsistencies to find an applicant incredible"ld. In Cao He Lin Second Circuit Decision

there is a reference to Ramsameachire, 357 F. 3d at 178 that states that; "an adverse credibility determination may not be based upon speculation or upon an incorrect analysis of the testimony,"'. It is also very important to state that in this case the Second Circuit underlined the fact that plausibility of how the documents are issued in the country that the Respondent seeks asylum from may not rest on the knowledge of how things are done in the United States; it should be based on "evdence of actual conditions in the asylum seeker's former country of residence" Id.

Similar statements and references may be found in Jin Chen case, the second of the Second Circuit Decisions, this decision stresses the fact that it is the Govemment obligation to obtain or present evidence to impeach documents, if they seen suspicious or ambiguous; "Thus the Government failed to sustain its burden to create a record from which the IJ could conclude that those documents were fabricated", this also has direct relevance to the case under consideration, because the Government did not create such record. Therefore, it is an established fact that credibility may not be judged based on speculation, presumption and suspicion, which in our opinion is present in the case under consideration.

The Immigration Court in this case expressed clear suspicion regarding the form of the leading Respondent husband's death certificate, because it contained the exact date of death, and the Respondent claims that the body of her husband had been in the water for some period of time, therefore, in Court's opinion the exact date of death could not have been determined (Decision, page 11). This served as one of the basis for adverse

credibility determination. There is no indication in the file as to how and on what basis such documents are generally issued in the Republic of Georgia, therefore, Judge's suspicion in light of Cao He Lin (see supra), has no justifiable by the country conditions basis to regard it a suspicious and therefore the Court's conclusion should be considered a speculation and presumption, and should not serve as a basis for adverse credibility determination.

Equally presumptuous and speculative is the Court's suspicion expressed as follows: "Asked why if there had been an attempt to cover up her [husband's] death, her father would have been called by the police to come to identify this body after filing a missing persons report some three months before, she simply answered that they probably did it to get rid of him, because he was a nuisance". The Respondent herself was forced to speculate, because only the police knows why they called her father to identify the body, there is no evidence in the file that shows that this is not the way the police in Georgia acts.

Even more presumptuous and speculative, as well as contradictive, is the following Judge's statement: "I was singularly unpersuaded by the respondent that her husband's problems were anything other than the problems a thief might have if being investigated for criminal acts. Although certainly ending up dead in a river would not be a reasonable outcome of that, there is no evidence from which the Court can draw a conclusion that his drowning in a river had anything to do with government authorities in the respondent's home country or indeed what the source of that might be at all. It is equally possible that there is "no honor

among thieves" and that he had problems from the people he was in this conspiracy with if he was in it with others". Even the wording of this Court's conclusion shows that it is not supported by "reasonable, substantial and probative" evidence when considered in light of the record as a whole. See Diallo v. INS F 3d 279, 287 (2d Cir. 2000), also see Jin Chen v. US Department of Justice & Attorney General Gonzales (see supra).

At the conclusion of her Decision the Judge wrote: "Although the Court does believe there is evidence before it which would certainly suggest that the respondent's husband died by drowning at the end of 1992, there is no evidence to suggest that was death by misadventure, there is nothing to suggest whether that death was accidental suicide or murder". We disagree and discussed it in details in our Appeal.

In Jin Chen v. US Department of Justice & Attorney General Gonzales (see supra) the Second Circuit reiterated its standards of evaluation of testimony: it has to be specific as to essential facts. The Respondent in the case under consideration was specific as to essential facts. From the very beginning when she filed her Application for Asylum she stated her husband's murder as the reason for her Application. In this Application she explained that her husband was "connected with Abhazians rebels and helped them to procure medical supplies". The same information she provided in her Statement in support of her Application for Asylum; "I strongly believe that my husband was killed by Georgian militants because of his activities against them in Sukhumi, which somehow had been disclosed". The same information she provided at the

hearing in Immigration Court.

"Testimony is too vague if it does not identify facts corresponding to each of the elements of on of the refugee categories of the immigration statutes..." Qiu v. Ashcroft, 329 F,3d1 151 (2d Cir. 2003). The Respondent's testimony is not vague and has been the same as to the essential facts. Some discrepancies in her testimony were caused by the fact that she herself was not present when her husband's body was discovered, when his death certificate was executed and she has found out about his political activity later and did not participate in them herself. However, from the very beginning she referred to his death as caused by his antigovernment activity as the result of his political opinion or implied political opinion, because government judges people based on their behavior.

We, therefore, move to reconsider the Board's order dismissing our appeal in light of the most recent Decisions of the Second Circuit.
December 22, 2005

File: A70-904-029 - New York
In re: KHANCHALIAN, SUSANA IN REMOVAL PROCEEDINGS APPEAL
ON BEHALF OF RESPONDENT: Floroff, Olga, Esquire

ORDER:

PER CURIAM. We adopt and affirm the decision of the Immigration Judge denying the lead respondent's applications for asylum, withholding of removal, and protection under the Convention Against Torture. See Matter of Burbano, 24 I &N Dec. 872, 974 (BIA 1994) (noting that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those the Immigration Judge articulated in his or her decision"). Upon review of the lead respondent's arguments on appeal, the Immigration Judge's decision, and the record as a whole, we agree with the Immigration Judge's adverse burden of proof, credibility, and on account of findings. The Immigration Judge's decision outlined material discrepancies and omissions within and between the respondent's testimony and asylum application and the documentary evidence she provided to support her claims. We find no error in the Immigration Judge's conclusion that the lead respondent failed to meet her burden of proof to credibly establish eligibility for relief or protection. See Matter of S-A-, 22 I &N Dec. 1328 (BIA 2000); Matter of A- S, 21 I &N Dec. 1106 (BIA 1998); see also Mali v. INS, 336 F.3d 989 (9th Cir. 2003) (upholding the adverse credibility finding because it was supported by specific, cogent reasons); Valderrama v. INS, 260 F.3d 1083 (9th Cir. 2001) (same); Pal v. INS,

244 F.3d 935 (9th Cir. 2004) (same). Accordingly, the appeal is dismissed.

File; A79-133-769 New York
In re; KHANCHALIAN,NATALI
IN REMOVAL PROCEEDINGS APPEAL
ON BEHALF OF RESPONDENT; Floroff, Olga, Esquire

ORDER:

PER CUIRAM. We adopt and affirm the decision of the Immigration Judge we adopt and affirm the decision of the Immigration Judge denying the lead respondent's applications for asylum, withholding of removal, and protection under the Convention Against Torture. See Matter of Burbano, 20 I &N Dec. 572, 874 (BIA 1994) (noting that adoption or affirrnance of a decision of an Immigration judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those the Immigration Judge articulated in his or her decision"). Upon review of the lead respondent's arguments on appeal, the immigration Judge's decision, and the record as a whole, we agree with the Immigration Judge's adverse burden of proof, credibility, and on account of findings. The Immigration Judge's decision outlined material discrepancies and omissions within and between the respondent's.testimony and asylum application and the documentary evidence she provided to Support her claims. We find no error in the Immigration Judge's conclusion that the lead respondent failed to meet her burden of proof to credibly establish eligibility for relief or protection. See Matter of SA, 22 I &N Dec. 1328 (BIA 2000); Matter of A -S, 211 N Dec. 1106 (BI A 1998); see also Ivlalhi v. INS, 336 F.3d 989-(9th Cir. 2003) (upholding the adverse credibility finding because it was supported by

specific, cogent reasons); Valderrama v. INS, 260 F.3d 1083 (9th Cir. 2001) (same); Pal v. INS, 204 F.3d 935 (9th Cir. 2000) (same). Accordingly, the appeal is dismissed.

AFFIDAVIT

I, Valery Pines, citizen of the United States of America, residing at 7917 18 Ave., Brooklyn, NY 11214, being duly sworn depose and state.

I am a naturalized citizen of the United States of America.

I arrived in the United States from Baku, Republic of Azerbaijan, a former Soviet Republic.

I am a linguist/philologist by education. I graduated from the Azerbaijan Pedagogical Institute of Languages in 1967. I also have the equivalent of a Ph.D. also in linguistics/philology (see copies of both Diplomas attached).

I was requested by Olga Floroff, Esq. to provide a linguistic explanation/interpretation of the entry on the Death Certificate of Samvel Khanchalian, specifically, the entry that refers to his cause of death.

In my opinion the verbatum translation of this entry is: Asphyxia with submergence. This entry in the Russian language is linguistically ambiguous and may have two meanings. The Russian original as literally incorrect and based on how this entry was made I come to the conclusion that the person who made this entry is probably semi-literate, even though employed by the Government of Georgia and authorized to issue documents of vital statistics. One of the meanings may be asphyxiation caused by drowning.

The other one is asphyxiation and further

submergence. Both sound equally clumsy in the Russian language.

I cannot speculate and state which one is the correct interpretation of the entry. I can only explain, that this entry is ambigouous and its exact meaning (i.e. how this death occurred) is unclear.

AFFIDAVIT

I, Susana Khanchalian, Respondent in Removal Proceedings, A 70904029, residing at 2939 Ocean Ave. #1M, Brooklyn, N.Y.11235, being duly sworn depose and state.

My original Application for Asylum was prepared by a nonlawyer tc whom I explained my situation and why I am afraid to go back to Georgia.

My first attorney in Court was Mr. Gregolia, who, as I later understood was not familiar with immigration law and I retained Attorney Nezu, who seemed to me was knowledgeable in Immigration law.

Mr. Nezu has never discussed the possibility to apply for protection under the Convention Against Torture. The first time I heard about this form of relief was when I met my current attorney Olga Floroff, who is helping me with the appeal of the Court's decision.

In Court I was asked several times why I changed my testimony about the events that happened to my husband in December 1992 - March 1993. I was not in Georgia at that time. All the iinformation I have and tried to describe to the best of my ability is based on the information received from my father, who himself knows only what the authorities in Georgia bothered to tell him.

In Court I was questioned about the discrepancy regarding ferry and dam, where my husband's body was discovered. I am once again explaining the following: there are two different, but similarly

sounding in the Russian language words: "plot" transliteration which means 'ferry' or 'raft' in the English language (according to the dictionary it should be translated as raft, but the interpreter was translating it as "ferry") and "plotina" [transliteration] which means "dam' in the English language. As you can see for yourself in the Russian language these words sound very much alike. I simply mixed them up. Russian language is my best language, even though when I was growing up I spoke three different languages: Russian, Georgian and Armenian. Sometimes I make mistakes in the Russian language, they are very minor mistakes, but this time I mixed up these two similarly sounding words.

I watch the events in Georgia closely. I have very reliable information that the current president,Saakishvili, is praising Gamsakhurdia, who was a strong nationalist. A far as I know Saakishvili called Gamsakhurdia a 'national hero".

In Armenia, as I testified in Court we, Georgian Armenians, are treated better then in Georgia, but much worse then the Armenians born and raised in Armenia. When I found out about my husband's death I was already in the United States and immediately started preparing my asylum case. I am genuinely scared.

File A 70 904 029
In the Matter of SUSANA KHANCHALIAN,
Respondent

U.S. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW U.S. IMMIGRATION COURT
New York, New York
August 9, 2004

IN REMOVAL PROCEEDINGS

CHARGE: Immigration and Nationality Act Section 237 (a) (1) (B)

APPLICATIONS: 208 asylum; 241(b)(3) withholding of removal to Georgia; the respondent waived relief under the Convention Against Torture

ON BEHALF OF RESPONDENT: ON BEHALF OF DEPARTMENT OF HOMELAND SECURITY:

Victor Nezu, Esquire
Counsel. of record
100. Avenue of the Americas
New York, New York 10018

Keshia Simmons, Esquire
Assistant District Counsel
New York District
Brian Kennedy for Decision only

ORAL DECISION OF THE IMMIGRATION JUDGE

Lead respondent is a female native and citizen of Georgia who is of ethnicity Armenian. The respondent entered the United States in or about November the 11th, 1992 as a nonimmigrant visitor for pleasure who has remained longer than permitted. The respondent has admitted the truthfulness of the factual allegations

contained in the Notice to Appear, Exhibit 1, and has conceded removability as charged. Based upon her admissions I find that she is removable by evidence that is clear and convincing. The minor included respondent, her daughter, Natalie, entered the United States in or about August 1st of 1997 also as a non-immigrant visitor for pleasure, and she has admitted that she has remained longer than permitted and has conceded removability as charged. Natalie seeks relief only insomuch as she is included under 208(b)(3) in her mother's application, so the case will talk only at the moment about the lead respondent's case.

The respondents each declined to designate countries for removal should that became necessary, and therefore, in consistent with the regulations, their countries of nativity, Georgia, have been directed. As relief from removal, the lead respondent submitted an application for asylum pursuant to Section 208 of the Act. The first application was filed April the 26th, 1993 and is marked as Exhibit 2. That application also serves as an application for withholding of removal under 241(b)(3) of the Act. The following exhibits are in the hearing record: Exhibit 3 is a court order. When these proceedings initially started the respondent's attorney first plead and then withdrew that pleading and stated that they believe this was amendable to termination. There was no termination motion ever filed and certainly not filed by the required deadline. The court, therefore, entered a court order reminding counsel of the due date for all other submissions. That is Exhibit 3; Exhibit 4 is an affidavit of the respondent; Exhibit 5 is an amended I-589 application for asylum; Exhibit 6 is an affidavit of the Archbishop of St. Gregory, the Illuminator Armenian Church in Brooklyn; Exhibit 7

for ID is an affidavit purportedly of one Iram Arkun which was proposed as an expert witness. However, he never testified and never came to court, and the Court did not admit the affidavit on objection of the Government; Exhibit 8 is a copy of the lead respondent's passport; Exhibit 9, her daughter, include the respondent; Exhibit 10, lead respondent's birth certificate; Exhibit 11, her daughter's birth certificate; Exhibit 12, lead respondent's university diploma; Exhibit 13, her marriage certificate; Exhibit 14, death certificate of Samuel Khanchalian; Exhibit 15, background evidence; Exhibit 16, DOS sticker opinion, all that they gave us; Exhibit 17, affidavit of accuracy; Exhibit 18, background evidence; Exhibit 19, proposed affidavit of the respondent's father with envelope showing its transit to the United States; Exhibit 20 for ID, other evidence from a so-called expert who again did not testify and who was objected; Exhibit 21, human rights reports; and Exhibit 22, a rap sheet; and Exhibit 23, a certificate of disposition.

To be eligible for asylum, a respondent must establish a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or a political opinion. For relief under 241(b)(3), she must show a real likelihood of clear probability her life or freedom would be threatened for the same reasons. Relief is discretionary under Section 208, mandatory under 241 (b) (3) if the higher evidentiary burden is met. See, for example, Cardoza-Fonseca v. INS,.484 U.S. 421 (1987) and INS v. Stevic, 487 U.S. 407 (1984). The burden of proof rests upon the respondent in these proceedings to show both eligibility for relief and as to any relief that is discretionary that's she warrants it in the exercise of discretion. And this set

forth clearly in both the law and in the regulations and has not been disturbed for a very long time with regard to proceedings. There are various ways in which the respondent can meet this burden of proof and persuasion. It can be done through credible testimony alone if that testimony is detailed, believable and consistent, and also though it has long been the standard that where documentary evidence should be reasonably be available, it is the burden of the respondent to present such evidence or to present a credible reason for why, that evidence is not available. See most recently in our Circuit Dialo v. INS, clarifying the longstanding group of cases, Matter of Dass, Matter of Acosta, Matter of S-M-J.

The respondent testified that she was born in Tbilisi, that she is Armenian by ethnicity and that she is a widow now at this time She came to the United States in November of 1992 at which point she was married to her husband who remained with her very small daughter back in Georgia. It is not entirely clear from the record whether at the actual time of respondent's departure her husband lived in Moscow which is where the respondent left from and where she claims to have lived with her husband or whether he was at that time living in Tbilisi or not. The record is confused on that issue.

The respondent claims that when she first came to the United States she came via Bulgaria, Romania, Yugoslavia, and Czechoslovakia. She has been to all of those places before coming to America. It's not clear whether they were actually on route or not. She did, however, come to the United States with a visa which she obtained in September of 1992, having applied in

July 1992, purportedly on the invitation of her friend of her husband, one Jackov Bachicovshvili. Despite the fact that the respondent first applied for asylum close in time or relatively close in time to her arrival, namely within about five months of arrival, she did not make any effort in 1993 to get any evidence from this friend of her husband and she claims that she now has no contact with him whatsoever.

The respondent claims that she left Georgia because her life was in danger. She said she was treated poorly because she was an Armenian and that Armenians were among the lowest in the population. Nonetheless, this was counted by testimony that she not only went to school but she has a university degree and therefore was certainly not deprived of all benefits while living in her home country.

The respondent testified, however, that closer to the time of her departure, she could not have gone to the Georgian government to get protection because they would turn their head away from her because she was an Armenian. She did not, however, ever seek to get any protection from them according to the record before this court.

The respondent testified that she married her husband October 27th of 1984 and that in subsequent years prior to their departure, her husband was a manager of a pharmaceutical company of some sort, living in Sukhumi. She testified that there she was able to feel like other people there because she was in the Abkhazia region which was a region which had a large number of Armenians. She said that, in fact, the Abkhazians wanted to succeed from Georgia and that even with

(indiscernible) this movement for internal autonomy or independence did not stop in fact, she testified that the movement had gained some ground at that time and that the government of Georgia believed that the movement should be stopped although the Abkhazia became, in fact, and was treated as autonomist-republic but they did not wish to grant them full independence.

The respondent claimed that her husband's brother, one Sergei Khanchalian became very involved in the Abkhazian Independence Movement. We have no evidence from them, we have no evidence as to where he might be. On cross-examination the respondent said she has no idea where he might be at this time. She made no effort to contact him close in time to her arrival and filing for asylum in 1993 according to her testimony.

The respondent testified that her husband also became a member but that she did not discover this until late autmn of 1990 when he was detained one day and didn't come home until very late in the middle of the night. She testified that she sensed something had happened at that time and that it was her impression that he had been beaten. He came home shaken. She believes this was towards the end of November 1990. She testified that her husband had been called to the police station that day, that her husband had been questioned with regard to missing medical supplies which he was accused of having stolen from the company he worked for and that he was taken for questioning but released that same night and allowed to come home. In fact, the respondent testified her husband had been stealing medical supplies from the company he worked for and supplying them "to the cause of freedom" and that he

had been instructed to do this by one of the Abkhazian leaders. The respondent claimed that her husband did this because he felt there was "'no way out", but in fact, he had unquestionably committed these crimes. The respondent testified that she was afraid, that she had a small child and that her husband had reluctantly admitted to her that he had done this.

She testified that in 1991 the situation deteriorated yet further, that there was a lot of struggle between the ethnicity, mainly between the Abkhazian and the native Georgians and that the Armenians were largely placed in the middle and were viewed from both sides as being somewhat enemies. She testified that she felt in danger especially after Georgia had separated from the U.S.S.R. The respondent testified after the the removal of the support or the suppressionist (phonetic sp.) times of the U.S.S.R. where everyone was expected to get along, hatred against Armenians was uncorked and it became clear that Georgian nationalist on the uprise, wanting Georgia for Georgians and that all others should get out. She testified that her city became on a war footing, schools were closed and that her husband was in danger because he had assisted the Abkhazian Movement and that sooner or later they decided that they would have to escape. She testified that she did not believe they had a future there. She testified that in June of 1992, they left everything and ran,going first to Tbilisi for two to three days and then on to Moscow with her husband. She then went to the embassy, she had a visa, she said, and then came on the the United States November the 11th, 1992. The respondent testified that neither she nor her husband could've stayed in Tbilisi because it was very dangerous there because her husband was a "new face" and it was likely

that he might be reported for that. She testified that as a new Armenia coming from Abkhazia, he would be subject to being reported and that the parents who lived in Tbilisi were old and they really didn't need to get in the middle of this, and she did not wish to subject them to danger so she went and stayed with an acquaintance of her mother's in Moscow from June `93 to November 1992 according to her testimony. The Court notes that this was inconsistent with her application, both the G-325A and Exhibit 5 with regard to where she was lived for a concerted period of time prior to her departure. When asked about that she simply testified that there were a lot of mistakes in her application. She did not really make any effort to clarify those issues.

Asked why she had not gone to Armenia, she said she would be considered different there also because she was not from there and she knew no one there and would just be as the same thing as in Georgia, a different person with a different language and culture known as Georgian Armenian. She came to the United States alone, leaving her husband who was the primary target and her daughter who was approximately five years of age at that time. She testified that they couldn't (indiscernible) because they weren't granted visas like that. Asked why it was that her husband had not come first because he was the one in danger, she said that he had had a problem but he no travel permit, but because she had previously traveled out of the country, it was easier for her to go first. She did not really explain why she did not bother to take her 5-year-old daughter at the time.

The respondent testified that after she departed her husband died December the 12th, 1992, that she heard

from her father her husband had not been home for two days. It appeared that her husband had somehow moved from Moscow to Tbilisi. This was rather vague testimony. She testified that she knew something bad must have happened, that she didn't really know what to do. She wanted to return but her parents told her she shouldn't. She testified she did not, in fact, discover her husband's fate until months late when on March the 22nd, 1993 she received a phone call from her father that he had identified a corpse as being that of her husband, that he had suffocated and drowned and that he was chained to a ferry with other corpses. With regard to this testimony, it was extremely confusing because the respondent's father's letter, Exhibit 19, makes no such claim of the body being discovered in that manner. The father states in his statement that the son-in-law had been missing for a concerted period of time since December and that he was asked to identify a body, but the information on the death certificate that was filed by the respondent is that the individual had dies from asphyxiation through drowning. There is nothing in her father's letter or in the death certificate that suggests the body was found with any other bodies whatsoever. There is nothing to suggest it was chained to a ferry. There was quite some clarification sought with regard to this. She testified that when asked on cross about her father saying that the body had been found in a river near a dam, she said yes, it was chained to it, that's how they found him. When it was noted that that was not in the letter, she said that the word for ferry and the word far dam were exactly the same. There was a check done in the dictionary, they are not the same word, and the Court was not satisfied with her explanation at all. She testified that her father couldn't have said what actually happened. There,

however, was no effort made to get a statement from him to clarify anything. It appeared to be a significant inconsistency because when questioned further it was the respondent's claim that her husband had been held and beaten and treated badly for the time between his disappearance and his body's discovery and that he was killed and then thrown into the river because the corpse might be recognizable and there was an effort to hide that. She testified that her husband had been detained all those months and had been tortured but at the end had been killed and thrown into the river. This was not consistent at all with her father's statement, there was no evidence to suggest that the body for any evidence of one dying prior to being thrown into the river which would not be consistent with asphyxiation by drowning, nor was there any evidence to suggest that the body was in poor condition at all with regard to its condition. What was somewhat confusing was why the death certificate indicated, Exhibit 14 indicated that the date of death was precise of December the 10th, 1992 if, in fact, it was the respondent's. claim that the body had been in the water for some period of time. The respondent bears of the burden of proof and persuasion, the respondent had to have known of the inconsistencies between her application and detailed statement, Exhibit 5, claiming her husband had been killed while in some sort of custodial detention and her father's letter which made no such statement. Asked why if there had been an attempt to cover up this death, her father would have been called by the police to come to identify this body after filing a missing persons report some three months before, she simply answered that they probably did it to get rid of him because he was a nuisance. The Court was not persuaded by her answer at all.

The respondent claims to be afraid to return. She testified that she is afraid she would suffer the same fate as her husband. She's been gone a long time, and because she has a new face there would be some suspicion attached. She testified that her husband was considered a traitor to his motherland and that she as his wife would stand in his shoes in some way and so would their daughter, Natalie. She testified that she would get no protection there because it was like a volcano and one couldn't know tomorrow what might happened. She says that the various groups still exists, the government appears to he indifferent to protecting people's rights and that she claims that her parents are even afraid to show their Armenian that they live in fear. The respondent testified her parents and her sister continue to this date to live in Tbilisi.

On cross-examination and on questioning by the Judge, the respondent was asked about whether her husband had ever had any problems other than day he had come home shaken in the middle of the night after being questioned and detained. There was suggestion in her testimony on direct at all that there were any other threats to her husband of a direct nature. She testified that he was called in subsequently to that night but detailed not one specific detention or questioning and nor did she say any of this on direct.

The respondent was asked on cross-examination how she knew that her husband's theft of medical supplies was purportedly in support of same political movement rather than simply theft for money. She testified that his theft made him a member of the Abkhazia Movement, that's how he signed up by doing that, and

everyone signed up in some way. Asked specifically how she knew he had not received any money, she said that her husband was a very orderly person and that money was not an issue then and that he knows he would not have sold out his freedom for money. She appears, however, to have had very little knowledge of what her husband was up to during that period of time It is unquestionably the conclusion of the Court that the husband was committing criminal acts, stealing from his employer regardless of where those goods were doing.

The respondent was asked after the close of direct and cross by the Court as to why they could not have stayed in Moscow, she said no one had any use for her there, that she was an Armenian amongst Russians and she was there just as a guest. However, she did confirm that she was never asked to leave Moscow in any way, that her husband with her in Moscow. And asked then how he could've disappeared from Tbilisi, it was unclear when her husband was supposed to have returned there. The father's letter certainly implied that the husband was living in Tbilisi.

On further questioning on cross about where the body had been discovered of her husband and what exactly the situation was, the court is strongly of the belief that the record of proceedings will show that the respondent just plain changed her testimony with regard to that, seeking to back off the issue of being chained to a ferry but unquestionably in the court's opinion changed her story to try to say that there were a lot of bodies going on at that time. The respondent was asked why it was that her statement said that her husband had been identified only by a key in his pocket because the body was decomposed, she said that, in fact, the body wasn't

so far one as to be unrecognizable but that there was a key chain that her father was able to identify. Again, there is no corresponding information in her father's letter, Exhibit 19, with regard to any of that.

The respondent on cross was asked where she had gotten all this information she had testified to with regard to her husband's body and its discovery, she said that her father had told her this. When it was noted that it was not in his statement she said well, he couldn't have written such statement, he just wrote it briefly. Again, it was essentially the same comment she had made as to why certain things have been said on direct considerably differently than they were said when on cross-examination. The Court did not find that evidence any more probative with regard to the father's letter being inconsistent than I had with her direct testimony and cross examination being different. Asked if she had any evidence at all to support her claim that beyond the death certificate and her father's statement with regard to her husband's death or her husband's condition when the body was discovered or anything else, she just said dramatically I have no proof, I'm just a widow. The Court notes that with regard to her testimony generally she was composed, she is not an uneducated, unsophisticated individual, in fact, she's one of the more sophisticated respondents the Court has ever seen She has an advanced degree and she clearly was in full control of everything during all the years she has been in the United States. I do not find her to have been the victim of any prior helper, I do not find her to be the victim of anyone at any time. I do find her not to have been persuasive to the Court with regard to her claim of her husband's situation other than the fact that we have death certificate

indicating her husband drowned in or about December of 1992, approximately a month after the respondent left Russia which is the country she departed from.

The Court also notes that the daughter did not leave Georgia until 1997. The record is entirely silent as to what the daughter was doing during that five years at all, although it is the Court's understanding that she lived with her grandparents. There certainly is no suggestion that there was any problem to her daughter, or to her parents, or to her sister at any time after the respondent's departure.

Finally, at the close of cross, the respondent was asked whether she committed any crimes in the United States, she said no. She was then confronted with the fact that a rap sheet indicated that she had an arrest. She said that it was all mistake an misunderstanding. The certificate of disposition does not, in fact, imply it was a misunderstanding at all. She plead guilty and paid the fine for it would appear shoplifting.

The respondent was specifically asked why 10 years later there would be any problem if she were to return. It is now about 1 years later, she said that people would all know about her husband's fate, that there would be fear for her and for her daughter. Asked why anyone would remember this 10 or as it is now 12 years later, she said well, in Georgia the neighbors know everything and that's the way it is.

I was singularly unpersuaded by the respondent that her husband's problems were anything other than the problems a thief might have if being investigated for criminal acts. Although certainly ending up dead in a

river would not be a reasonable outcome of that, there is no evidence from which the Court can draw a conclusion that his drowning in a river had anything to do with government authorities in the respondent's home country or indeed what the source of that might be at all. It is equally possible that there is "no honor among thieves" and that he had problems from the people he was in this conspiracy with if he was in it with others. As much as the respondent's claim that somehow the government of Georgia was responsible for this, that does not appear to be in the record, and when, in fact, asked specifically as to whether her husband had ever had any other detentions or arrests, the respondent said that although he was questioned he was never arrested at any time and there really noting in the record to support an inference of government action, nor is there evidence in the record to suggest that the respondent's husband was singled out by some sort of splinter that the government of Georgia was unable or unwilling to control and that there might be any sort of vendetta against him. This case was filed originally close in time to the respondent's arrival into the United States which was close in time to her departure. Instead of making an attempt when she timely filed for asylum to gather any evidence she didn't. She made no effort to keep in contact with anyone, and the only thing we have by way of outside evidence of any value in this case at all is her father's letter which is inconsistent with her testimony. Frankly, I did not believe the respondent. I do not believe that she has established that the government of Georgia had anything to do with her husband's death. I am not satisfied that the respondent would be identified as a threat to anyone or to be the enemy of anyone if she were to return to her own country, and I do not

believe there is any evidence to suggest that she has any reasonable ongoing fear of return to that country. Her testimony was inconsistent with regard to the embroidery she added as to the alleged situation of her husband, the condition of his body, the manner in which he died, and the place in which the body was found. She had no reasonable explanation for any of those discrepancies from her father's statement other than to say he couldn't have written that. There is no evidence before the Court to suggest that he could not have written a letter that was accurate and true. There is no suggestion that there was any limitation on him at all, and he seems to have had no trouble sending both a letter and a death certificate, an official document, to corroborate that death. Although the Court does believe there is evidence before it which would certainly suggest that the respondent's husband died by drowning in the end of 1992, there is no evidence to suggest that was death by misadventure, there is nothing to suggest whether that death was accidental suicide or murder, the record is entirely silent as to that as is the father's letter. The father's letter does not imply that the condition of the body was anything to raise questions other than the father being surprised that he had no returned home and that was why he had declared him and reported him to be a missing person Certainly, three months later for the police to go back and seek to identify this body throughout the respondent's father shows a reasonable amount of police diligence, it certainly doesn't show any sort of conspiracy or reason to believe that the government wished to hide the respondent's husband's body in any manner, shape, or reason.

The respondent herself has never been threatened in

any way. The respondent's daughter, to the best of the Court's knowledge, has never been threatened in any way. There is no evidence to suggest that the respondent's parents or sister in Tbilisi have ever been threatened in any way. I do not believe that the respondent fled because of a dangerous situation in her home country. I do not believe that if she were to return to that country, she is at any risk whatsoever of any injury from any source whatsoever. Therefore, I do not believe the respondent has carried her burden of proof and persuasion and I deny her application for asylum and for withholding of removal, both for lack of evidence and because of the discrepancies for lack of credibility. Because the minor respondent is dependent entirely upon her mother's application, the Court notes that the mother's application, having been denied, the daughter's must also denied to the extent it is even considered to have a separate application. And I note that the daughter's applications were derivative in nature only that she never, in fact, filed on her own behalf. Therefore the following orders will also be entered.

ORDER

That the lead respondent is ordered removed from the United States to Georgia on the charges set forth in the Notice to Appear.

And noted that Natalie is also ordered removed from the United States to Georgia on the facts set forth in her Notice to Appear.

Dated August the 9th, 2004,

Q. On, on December 10th, well, on December 12th, 1992 I got a phone call from my father, saying that my husband had now not been home for two days, and then I understood that something very bad had happened to him. And I just didn't know what to do. My parents, I wanted to go back. My parents told me that if you come back, there is, you're not going to be able to help in any way because I mean a week had a gone back, a second week, a third week and I didn't know what to do. And all those several months until I found out what his fate was, what had happened to him were simply a nightmare for me. And then only on March 22nd, 1993 I got a phone call from my father that he had identified my husband's corpse, he had been found. He had been suffocated and drowned in the Cora (phonetic sp.) River. They found him, he had been changed to a small ferry, well (indiscernible) like you know, chained, like tangled up, like chained. And their were called and they came down and they identified among several corpses my husband's corpse. That's how I found out that he had been killed.

A. Was there an autopsy performed on your husband?

Q. (Indiscernible) not only was there no autopsy, there was no investigation even. They didn't even establish a date of death because they said it was very late and so they didn't do that. And judging from what my father told me, the corpse was recognizable, he was able to identify it. And I, I am certain that before he was killed he had been detained somewhere

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Q. Go ahead, counsel.

MR. NEZU TO MS. KHANCHALIAN

Q. Do you believe your husband's death was an accident?

A. No, I do not believe that.

Q. Do you think he was killed?

A. Yes.

JUDGE To MR. NEZU

Q. Counsel, you've just gone way over the line again. she wants to say things, she says them, not you.

A. Your Honor, she said earlier that she thought was killed.

Q. Then why are you asking again. It she doesn't remember what she said five minutes ago, I'm not going to let you remind her.

A. Your Honor

MR. NEZU To MS. KHANCHALIAN

Q. what do you believe happened to your husband?

JUDGE To MR. NEZU

Actually she didn't. say he was killed. She says and I quote, "that she knew something very bad had happened." She then said that the corpse had been found, that he had been suffocated and drowned, chained to a ferry with other corpses. It's not quite the same. And. earlier in the hearing she said she had

learned of his death and that was phrase she used.
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Q. Go ahead, Ms. Simmons.

A. Yes, Your Honor.

MS. SIMMONS TO MS. KHANCHALIAN

Q. Ma'am, you stated that your husband's body along with other corpse were found chained to a ferry, why have you not submitted any newspaper articles regarding this fact?

A. Well, at that time packs of people were being found, this was not news, it was a different time. Who, who was my husband that they would have space for him in the paper.

Q. So your husband was not well-known in that town?

A. The, well, the, they killed my husband and then they're going to write about him in the paper? There was no, for that to have happened there would have to be justice, the newspapers would have to be reporting on justice and there was no justice in the country.

JUDGE To MS. KHANCHALIAN

Q. Ma'am, let me go back a step please. Where was your husband's body discovered, in what town or city?

A. Tbilisi, the Cora River.

Q. You claimed that his body and others were all found together, if I understood you correctly, is that right?

A. No, when my, when my father went to identify him there were corpses in the morgue.

Q. That wasn't what you said. There are always corpses in the morgue anywhere.. You said and I quote, "He was chained to ferry with other corpses." Those are your words. You said that, you clearly stated that his was not the only body chained to this ferry. Are you changing your testimony?

A. Perhaps, no, I'm not changing my testimony. Perhaps I misspoke in some way. I, I said that my, my father went to identify his corpse among other corpses.

Q. That isn't what you said, that was not what you said.

A. other corpses that were with him.

Q. That is not what you said and the record will stand.

A. Well, I, I, I must have misspoken. I meant other corpses that were also,, that he was amongst other corpses, and that, maybe somehow it came out that the other corpses were with him at the ferry or dam or --

JUDGE FOR THE RECORD

The record stands.

JUDGE To MS. SIMMONS

Q. Ms. Simmons?

A.Yes, Your Honor.

MS. SIMMONS TO MS. KHANCHALIAN

Q. Ma'am, you also stated on direct that your husband was stealing pharmaceuticals from his job, how do you know that this fact did not contribute to his cause of death?

A. No, I'm certain that that is why they killed him, I didn't know whether or not he was coming home.

Q. Ma'am, you've answered myquestion, but what is interesting to me is that that isn't what you said on direct examination. You made no suggestion that he was called in repeatedly other than the one time he arrived home visibly shaken, so why did you not say this on direct?

Q. Well, I, I, I, I answered in, in brief and I had expected that I would go on, but I was answering the specific question, when did I find out that he was a member of this organization.

JUDGE FOR THE RECORD

I will note for the record that I did not have the impression that the respondent was cut off in any manner at any time, and in fact, often because of counsel's long pauses, the respondent took that as an opportunity to just keep talking for five and seven minutes of the clip.

JUDGE TO MS. KHANCHALIAN

Q. Ma'am, why did you not stay in Moscow where you lived apparently without problem for more than five months?

A. Well, at, at, nobody had any use for me in Moscow. I had nowhere that I could actually live, I was just there temporarily as a gift. I, an Armenia amongst, an Armenia amongst Russians. I couldn't even go to Armenia, let alone be an, an Armenian amongst Russians.

Q. No one at any time forced you to leave Moscow, is
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Affidavit of Grigory Bagratbvich Stepanyan
12 Mirtskhulava Street, # 6, Tbilisi, Georgia

I, Grigory Bagratovieh Stepanyan, hereby declare under penalty of perjury that the following statements are true and correct to the best of my knowledge.
I, Grigory Bagratovich Stepanyan, father of Susana Khanchalian, residing at the address of 12 Niirtskhulava Street, #6, Tbilisi, on or about December 12, 1992 called my daughter Susana to inform her that her husband, Samvel Khanchalian, was missing. My wife and I were extremely worried concerned by these news. He was a family-oriented man and such absence was not common for him. The situation in the city was very bad and there were instances of young people being detained, beaten and interrogated by the police as well a by various militant groups. After he failed to show for several days my wife and I decided that things have taken turn for the worst and went to the Didubiyskiy District police precinct. We filed a missing person report regarding the disappearance of our son-in-law. The police informed us that due to the criminal situation in the city many people have been missing and many of those have been found dead. They did not have the resources to investigate every case, and promised to inform us if there were any news. The next few weeks my wife and I went to several hospitals and morgues, were contacted by the police to identify several bodies, but none of them belonged to our son-in-law. On or about March 21-22, 1993 we received a call from the police to identify another body at the 1st City Hospital Aramyants. My wife and I identified the body as our-in-law, Samvel Khanchalian. His body was found in the Kura River near a small dam.

I hereby confirm that the present affidavit is issued by me and was written based on my testimony,

2. Have you or any member of your family ever belonged to or been associated with any or groups in your home country, such as, but not limited to, a political party, student group, labor union, religious organization, military or paramilitary group, civil patrol, guerilla organization, ethnic group, human rights group, or the press or media? Yes...My late husband, Samvel Khanchalian, was involved with the Abkhazian Independence Movement. His brother was also a member of this organization. To the best of my knowledge, my late husband joined this organization sometime in the late 1980s, at a time when tensions in Abkhazia were high and the movement to separate and secede from Georgia was gaining support. Because of the changing political landscape in the Soviet Union and the growing tension and hositility between Abkhazians and Georgians, ethnic Armenians like my hsuband and I, were forced to choose sides. My husband was an Assistant Manager in the Sukhumi Pharmaceutical Department. His position gave him access to medical and pharmaceutical supplies. He used this authority to acquire on behalf of the movement. (See my attached affirmation for more details).

3. Have your or any member of your family ever been mistreated or threatened by the authorities of your home country or any other country or by a group or groups that are controlled by the govenrment, or that the government of the country is unable or unwilling to control?

Yes...Race/Religion/Membership in a particular social group/Political Opinion...My hsuband was beaten and interrogated on numerous occasions on account of his race (Armenian), political opinion and social group

membership (involvement with the Abkhazian Independence Moevement). On other occasions my husband returned home after being chased and stoned by Georgian paramilitary soliders. Ultimately, he was murdered because of his political opinions and social group membership. (See my attached affirmation for more details).

4. Have your or any member of your family ever been accused, charged, arrested, detained, interrogated, convicted and sentenced, or imprisoned in your country or any other country, including the United States? Yes...In the late 1990 my late husband, Samvel Khanchalian, was beaten and interrogated on numerous occasions by police in Sukhumi Georgia, the first instance occurred because his boss at work, A Georgian, suspected him of stealing medical and pharmaceutical supplies. Although no charges could officially be proved against him, subsequent detentions, interrogations, and beatings followed over the next several weeks and months because the police suspected his involvement in the Abkhazian Independence Movement. (See my attached affirmation for more details).

14. Some of our Armenian friends escaped to Russia to live with friends or relatives until the war ended. But, for most of us, there were few options. Going to Armenia was not possible because we were as foreign and unwelcome in Armenia as if we were not ethnic Amnenians at all. So, my husband arranged for us to be invited to the United Mates by a friend, a man by the name of "Yakoff." I do not know the precise details of the arrangement but my husband told me we would be safe in the United States while we waited for the war to end.

15. So, in the summer of 1992, we devised a plan. Without a word of warning to any of our neighbors or friends (there were a few exceptions), we snuck out of Abkhazia and headed for Tbilisi and my parents' home. Together with money my parents had prepared for us I would travel to Moscow and from there, travel to the United States. We deceided on this course of action because it was common knowledge that the U.S. embassy would never have allowed me, my husband and our daughter to travel to the United States together. So, my husband and daughter were to follow me to the United States after a month or two had passed.

16. With a great deal of fear and dread at the thought of being separated from my family I, nevertheless, traveled to Moscow and boarded a flight for New York. I arrived on November 11th,1992. Upon my arrival I immediately began calling my husband to see when he and my daughter would come to join me. He told the to be patient and that it would not be much longer. I believed him and tried to wait patiently.

17. Then, on December 12, 1992 I received a call from my parents telling me that my husband had been missing for two days, since the 10th of December. I was beside myself with fear and helplessness. I thought I would go mad. I wanted to go back but my parents told me my daughter was fine and that I was better off waiting in the United States because there was nothing I could accomplish by returning to Georgia. They told me that people (mostly men) were often disappearing for days on end only to return home with stories of beatings and interrogations at the hands of the police or some other paramilitary group. Especially since he was a new face in the. area someone was likely to report him as a suspicious character. or, they said, he would certainly return home very soon, having experienced the same torturous abuse as so many others.

18. Some days thereafter, my parents went to the police to file a missing persons report. With so much going on in Georgia, and with so many missing people, finding my husband was not high on their list of priorities, As the days turned into weeks I began to fear the worst. As I later learned, my parents began visiting the police station and the morgue whenever they were notified that an unidentified body was discovered.

19. On March 22, 1993, more than three months after Samvel's disappearance, my parents called to tell me that they identified the body of a drowned man found in the Kura River in Tbilisi as that of my husband. Although he was partially decomposed they knew it was my husband because of the apartment key found in his pocket. The medical examiner said that he was probably strangled before being thrown into the river.

However, no autopsy was performed because the examiner said it was too late to gather any information about the cause of death.

20. A death certificate was issued stating that Samvel died on December 10th,1992, the date of his disappearance. I know that this was not the case. His body, by my parent's account, was***

Immigration Court

In the Matter of Natali Khanchalian Respondent

Case No. A79-133-769

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Aug. 9, 2004. This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

The respondent was ordered removed from the United States to Georgia.

Respondent's application for asylum was denied – deriative only

Respondent's application for withholding of removal was denied – deriative only

Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.